Supreme Court, U.S.
FILED
SEP 6 1992
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(3)

No. 92-182

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1992

LORNA L. WILLIAMS,

Petitioner

vs.

THE INCORPORATED CITY OF OKOBOJI, IOWA, BEN D. SAUNDERS, City Administrator; LEO PARKS, Mayor; HAL REED, CHRIS BJORNSTAD, KIRK STAUSS, CHARLENE HOUGE, JAMES GOLDEN, Council Members, and MICHAEL CHOZEN, City Attorney,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONER'S REPLY BRIEF

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Reply to the statement of the case,

Respondents neglects to inform the Court (1) that two-family homes are expressly permitted in R-1 Districts (Section 2 of Article V of the 1972 Ordinance No. 63) and (2) that the granting of the variance was to permit the Petitioner to have rental income, and (3) that Ordinance No. 63 did not repeal the

provision in the 1964 Ordinance No. 44 which expressly permits an owner to rent his residential dwelling.

Respondents fail to mention that it was an admitted fact (and conclusion of law of the State court judge) that on May 24, 1989 when Respondent City filed its PETITION and obtained an ex parte temporary injunction against this Petitioner it was on a void ordinance, never having been legally enacted.

They do not mention that before appearing in this State action, Petitioner filed this 42 U.S.C. 1983 action for procedural and substantive due process violations and declaratory judgment.

They do not mention that at the State trial, the City produced no evidence that a one-month residency ordinance was used or even necessary to control "party-spirited noise, littering, rowdiness, etc." or that there was a relationship between length of occupancy and such behavior. In fact, it had made no study of the matter. A long-term resident, and the

attorney for the City at the time the ordinance was passed, testified he had "never heard of any complaints" about "rowdiness, partying, littering, et cetera" by any persons renting for less than 30 days. He named eight persons in the city he knew had or were renting their dwellings for less than 30 days.

There was no evidence that this "durational residency" and "same person or same group of persons" occupancy provision promoted the "health, safety, morals or general welfare of the City of Okoboji". (Article I, Ordinance 63, Iowa Code 414.1)

It is not true as stated on page 5 that "both procedural and factual issues" have been decided against Petitioner by the United States District Court for the Northern District of Iowa/Western Division and the Eighth Circuit Court of Appeals. The case was dismissed under the Younger abstention doctrine.

This case has never been heard on the merits. That is the cogent reason for the granting of the writ.

Reply to Respondents' Arguments

This Federal Court is the ultimate forum to decide if a local ordinance violates the federal constitution. Nectrow V. Cambridge, 277 U.S. 183, 188 (1928) Moore V. City of East Cleveland, 431 U.S. 494 (1977).

This is true even if a State court, as here, wrongfully holds an ordinance constitutional. England V. Louisiana Board of Medical Examiners. 375 U.S. 411 (1964)

This Respondent-styled "unique local ordinance" is not beyond scrutiny by this Court, as contended by Respondents. Nectrow V. Cambridge, supra.

Other resort cities with restrictive ordinances have had their ordinances struck down. Hassen V. Town of East Hampton, 500 F. Supp. 1034 (S.D.N.Y. 1980); Fox V. Town of Bay Harbor Islands, 450 S.2d 559, 561(1984).

The Iowa District Court in this instant case earlier denied the summary judgment of Respondent City of Okoboji based on a case having a "durational residency" provision.

United Property Owners Association of Belmar V. Belmar 447 A.2d 933 (N.J. Sup.A.D.(1982) Certif. denied 185 N.J.S. 163.

Respondents cite five cases in federal lower courts which are not even remotely relevant. The plaintiffs in every one of the cases filed their complaint because a city/county had denied their applications, to subdivide, rezone, build, etc. None of them had been given a property right by the city/county.

Here, Respondent City of Okoboji in the year 1980 gave Petitioner Williams valuable property and liberty rights. Then, after eight years of the peaceful exercise of those rights, the Respondent City attempted to amend its ordinance without notice and public hearing required by statute.

Quoting from this void attempted amendment Ordinance 99, knowing it was void (App. p.40 Pet.Br.), Respondent City DID obtain an ex parte temporary injunction against Petitioner and place a wrongful

lis pendens lien on her real estate, which lien still exists.

Adopting Respondents' argument before the United States District Court for the Northern District Court that zoning issues are local issues confined to local venue, the Honorable Judge Donald E. O'Brien granted Respondents Motion for Summary Judgment and dismissed Petitioner's entire action on the Younger abstention doctrine, including the stated federal claim for damages for due process violations. (App. p.7 Pet. Br.)

The Circuit Court affirmed that opinion saying, "We agree with the decision of the district court and affirm on the basis of its well-reasoned opinion." (App.p.3,Pet. Br.)

Respondents now urge this Court to adopt those same irrelevant cases wherein the federal plaintiffs' applications to the local government had been denied, and unlike here, they had obtained no protected property rights. (Res.Brief p.9).

CONCLUSION

All the prolonged and varied litigation between these parties could be straightened out if this Court would grant certiorari, vacate the judgment below, decide the stated federal issue of declaratory judgment on Ordinance No. 99, order the wrongful lis pendens lien released, and declare damages due Petitioner because of the bad faith of Respondent City in seeking to enforce an Ordinance it knew had never been enacted and deliberately violating Petitioners procedural and substantive due process rights. Ordinance 99 is still on the books.

Then, upon remand, with these things determined by this highest Court of the land, and protector of individual constitutional rights, the only thing for the district court to do upon remand would be to assess damages.

Respectfully submitted,

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